

October 06, 2023

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### **Re: Request to Make Permanent Electronic Signatures for Section 83(b) Elections**

The undersigned organizations appreciate the efforts the Internal Revenue Service (IRS) has taken throughout the pandemic to protect employees, taxpayers, and their representatives while executing its mission. In particular, we appreciate the IRS' efforts to deviate from its normal practice by:

- Allowing taxpayers to use electronic or digital signatures when signing certain forms<sup>1</sup> that normally would require a handwritten signature, and
- Permitting expanded electronic transmission alternatives for certain documents.

These changes have enabled the IRS to continue promoting timely filing while at the same time recognizing the preferences of Americans during the pandemic. In November of 2021, the IRS granted<sup>2</sup> temporary pandemic-related relief allowing elections<sup>3</sup> under sec. 83(b)<sup>4</sup> to be signed electronically. This limited signature relief is authorized through October 31, 2023. We recommend making this electronic signature relief permanent, or at minimum temporarily provide a continued extension for sec. 83(b) e-signatures beyond the October 31, 2023 expiration date as the IRS works to develop a long-term solution for this capability.

Additionally, we note that taxpayers are still required to physically mail in paper submissions of their sec. 83(b) elections. We recommend allowing<sup>5</sup> the sec. 83(b) election forms to be e-filed on a permanent basis.

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<sup>1</sup> See IRS Fact Sheet, "[Details on using e-signatures for certain forms](#)," updated December 8, 2021.

<sup>2</sup> See IRS website, "[Details on using e-signatures for certain forms](#)," updated December 8, 2021.

<sup>3</sup> See Carta article, "[Fixing 83\(b\) elections](#)," March 11, 2021.

<sup>4</sup> All references to "section" are to the Internal Revenue Code of 1986, as amended, and all references to "Reg. §", "Prop. Reg. §", and "regulations" are to U.S. Treasury regulations promulgated thereunder, unless otherwise specified.

<sup>5</sup> See coalition comment letters: "[Request to Make Electronic Signatures Permanent and Allow E-Filing for Section 83\(b\) Elections](#)," submitted February 10, 2023 and "[Electronic Signature & Transmission Relief for Section 83\(b\) Elections](#)," submitted March 9, 2021; Carta comment letter: "[Recommendations for the 2022-2023 Priority Guidance Plan \(Notice 2022-21\)](#)," submitted June 03, 2022; and H.R. 7090 (117<sup>th</sup> Congress) "[Eliminating Paperwork for Startups Act](#)."

The Inflation Reduction Act (Public Law No: 117-169)<sup>6</sup> provided an additional \$80 billion to fund the IRS, with \$4.75 billion allocated for agency modernization. We encourage the IRS to direct the appropriate funds towards prioritizing taxpayer services, including the expansion of e-filing forms to include sec. 83(b) elections.

## BACKGROUND

The sec. 83(b) election enables founders, employees, and other service providers who are granted compensatory equity (or other property), subject to vesting, to be taxed on the value of such equity on the grant date on which the equity is acquired rather than a later date when the equity vests or becomes transferable. Making a timely election can have a substantial impact on tax liability and planning for new business owners and employee-owners. To timely file a sec. 83(b) election within 30 days of receiving an equity grant (or early exercising a stock option), a taxpayer prints two copies of the election, physically signs them with a wet ink signature, and sends them via certified mail, along with a cover letter and self-addressed return envelope to the IRS. The taxpayer then waits for the IRS to stamp and return a copy.<sup>7</sup> This process is outdated, inefficient, and burdens already-strained IRS resources. It also imposes an onerous process on filers and often leaves them uncertain of their election filing status.

## RECOMMENDATIONS

Treasury and the IRS should:

- 1) Permanently allow sec. 83(b) elections to be electronically signed, and
- 2) Provide taxpayers the option to submit sec. 83(b) elections electronically.

## ANALYSIS

### *1) Permanently allow sec. 83(b) elections to be electronically signed.*

We encourage the IRS to allow for electronic and digital signatures of sec. 83(b) elections on a permanent basis, or at minimum temporarily provide a continued extension for sec. 83(b) e-signatures beyond the October 31, 2023 expiration date as the IRS works to develop a long-term solution for this capability.

Since the IRS's initial April 2021 memorandum allowing electronic signatures on sec. 83(b) elections<sup>8</sup> and extending the period for electronic signatures on other forms,<sup>9</sup> taxpayers have adapted and appreciated the modernization, efficiency, and effectiveness of the new process. We understand that the IRS is studying possible further extensions of this option as the agency is balancing the e-signature option with critical security and protection needed against identity theft and fraud. Allowing digital signatures would help increase IRS efficiency, improve taxpayer compliance, and possibly reduce the risk of fraud.

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<sup>6</sup> See Public Law No: 117-169, "[Inflation Reduction Act](#)," passed on August 7, 2022.

<sup>7</sup> The service provider also delivers a copy of the election to the person for whom the services were performed and, if the unvested property was transferred to someone other than the service provider, the service provider delivers another copy to the recipient of the property.

<sup>8</sup> See Memorandum from Sunita Lough, deputy commissioner for services and enforcement, "[Temporary Deviation from Handwritten Signature Requirement for Limited List of Tax Forms](#)," issued April 15, 2021.

<sup>9</sup> See Memorandum from Sunita Lough, deputy commissioner for services and enforcement, "[Approval to Accept Images of Signatures and Digital Signatures](#)," issued March 27, 2020 (later extended multiple times).

2) *Provide taxpayers the option to submit sec. 83(b) elections electronically.*

In recent years, the IRS has taken action to streamline the sec. 83(b) election filing process by removing the obligation to file an additional copy of the form with the taxpayer's annual return. Our recommendation is another step toward streamlining and modernizing the filing process and reducing administrative costs for the IRS while mitigating taxpayer burdens.

The Inflation Reduction Act has provided an additional \$80 billion to fund the IRS and support various areas of the organization. The National Taxpayer Advocate recommends<sup>10</sup> in the [2022 Annual Report to Congress](#) that the IRS leverage a portion of its new funding to identify and minimize e-filing barriers for individual and business taxpayers. Furthermore, the IRS's Fiscal Year 2023-2031 Strategic Operating Plan,<sup>11</sup> which outlines its multi-year priorities, includes a primary goal to expand electronic filing capabilities. We support prioritizing this strategy and encourage the IRS to allow e-filing of sec. 83(b) elections to help ease the burden of taxpayer compliance because the current paper filing process is labor intensive and costly.

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The undersigned organizations recognize and appreciate the challenges of the work that the Treasury and the IRS are doing. We respectfully request an expansion of the action you have already taken to provide adjustments to the e-signature guidance and authentication requirements for sec. 83(b) elections and assess permanent reforms to the sec. 83(b) e-signature and filing process.

We appreciate your consideration of these recommendations and welcome the opportunity to discuss these issues further. If you have any questions, please feel free to contact Amy Miller, Director of Public Policy at Carta, at (610) 742-2612 or [amy.miller@carta.com](mailto:amy.miller@carta.com).

Sincerely,

500 Global  
Capital Factory  
Carta, Inc.  
Cooley LLP  
Croke Fairchild Duarte & Beres LLC  
Davis Polk & Wardwell LLP  
Engine  
Fenwick & West LLP  
gener8tor  
Goodwin Procter LLP  
Gunderson Dettmer Stough Villeneuve  
Franklin & Hachigian LLP  
Johnson & Oshan Law PLLC  
Koenig, Oelsner, Taylor, Schoenfeld &  
Gaddis PC  
Latham & Watkins LLP  
Lowenstein Sandler LLP  
Mayer Brown LLP

McDermott Will & Emery LLP  
Mintz, Levin, Cohn, Ferris, Glovsky &  
Popeo PC  
Morrison & Foerster LLP  
National Venture Capital Association  
Optimal Counsel LLP  
Orrick Herrington & Sutcliffe LLP  
Perkins Coie LLP  
Plug and Play  
Sidley Austin LLP  
Silicon Legal Strategy PC  
Simpson Thacher & Bartlett LLP  
Stripe, Inc.  
Tribe Capital Management LLC  
Union Square Ventures  
Vela Wood PC  
Wilmer Cutler Pickering Hale & Dorr LLP  
Y Combinator Management LLC

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<sup>10</sup> See Taxpayer Advocate Services, "[Most serious problems #6: E-filing barriers](#)," issued 2022.

<sup>11</sup> See IRS [FY 2023-2031 Strategic Plan](#).